IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.4771 of 1999

V.N.Muthusamy .. Petitioner.

Versus

1.The Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5.

2.The Additional District Magistrate,
Erode District, Erode. .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent, dated 29.8.97, made in Mu.Mu.64486/97/C3 and confirmed by the first respondent in his proceedings, dated 21.9.98, made in Dis.RAV(2)16800/98 (AA 230/97), quash the same and consequently, direct the respondents to consider the petitioner's application afresh for grant of licence to have DBBL Gun.

For petitioner : Mr.N.Manokaran
For respondents : Mr.V.Manoharan (R1)
Government Advocate

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O R D E R

Heard, Mr.N.Manokaran, the learned counsel appearing for the petitioner and Mr.V.Manoharan, the learned Government Advocate appearing for the respondents.

2. It is submitted that the petitioner is a permanent resident of Parayar Koil Thottam, Arakkan Kottai, Gopichettipalayam Taluk. The petitioner is owning 20 acres of land in Arakkankottai Village, which is situated very close to Sathyamangalam Forest. The petitioner is cultivating sugarcane, turmeric and other crops. The house of the petitioner is situated outside the village in a remote

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place. The members of the petitioner's family, including his aged parents were living in the said house. The petitioner had applied to the second respondent for the grant of a licence for a Double Barrel Breech Loaded gun for his personal safety and for crop protection. Pursuant to the application made by the petitioner, the second respondent had called for a report from the Tahsildar, Gopi and the Superintendent of Police, Erode District. Though the Superintendent of Police, Erode, had no adverse remarks against the petitioner for granting the licence and the Tahsildar, Gopi, had submitted a report without any adverse remarks against the petitioner, the second respondent had rejected the application by his order, dated 29.8.97, made in Mu.Mu.64486/97/C3. The petitioner had preferred an appeal, dated 11.9.97, to the first respondent. By an order, dated 21.9.98, the first respondent had confirmed the order of the second respondent, rejecting the application of the petitioner.

3. The main contention of the petitioner is that since no adverse remarks had been made against the petitioner's request, the respondents ought to have granted the licence, in accordance with the provisions of law, as provided under Sections 13 and 14 of the Arms Act, 1959, which read as follows:

> 13.Grant of licences:
>
> (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied such fee, if any, as may be prescribed.
>
> (2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on the application, and such officer shall send his report within the prescribed time.
>
> (2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same.
>
> PROVIDED that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deemed fit make such order, after the expiry of the prescribed time, without further waiting for that report.
>
> (3) The licensing authority shall grant -
>
> (a) a licence under Section 3 where the licence is required-
>
> (i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of

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muzzle loading gun to be used for bona fide crop protection:

PROVIDED that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government.

(b) a licence under Section 3 in any other case or a licence section 4, Section5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences:

(1) Notwithstanding anything in Section 13, licensing authority shall refused to grant,-

(a) a licence under Section 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,-

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mine, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or process sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

4. Mr.V.Manoharan, the learned counsel appearing on behalf of the respondents had contested the claims made by the petitioner and had submitted that the grant of licence to the petitioner does not arise unless the petitioner could show that there is such a

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necessity as required under law. Since the petitioner had not proved before the authorities concerned that there was a real threat to the petitioner or his properties as alleged, the authorities were justified in refusing to grant the licence as requested by the petitioner.

5. The learned counsel appearing for the petitioner had referred to an order of this Court made in *K.Mani Vs. District Revenue Officer, Madurai and another (2007 (1) MLJ (Crl.) 339)*, wherein the impugned order challenged in the said writ petition had been set aside and the petitioner was permitted to make a fresh application for grant of licence to possess a gun as prescribed by law.

6. The learned counsel appearing on behalf of the respondents had submitted that the facts of the case referred to above would not be applicable to the present case. Since the writ petitioner had not proved that the grant of licence to the petitioner is for a bonafide reason, the rejection of the request by the authorities concerned is valid in accordance with the provisions of law.

7. Considering the submissions made by the learned counsels appearing for the parties concerned, this Court is of the considered view that the petitioner has not made out sufficient cause or reason to quash the impugned orders passed by the respondents, as the onus is on the petitioner to prove to the satisfaction of the respondents that it is necessary for him to possess a licence for a Double Barrel Breech Loaded gun. The respondents have held, by their impugned orders, that the petitioner had not shown that such a necessity had existed. However, it is made clear that it is open to the petitioner to make a fresh application for the grant of licence for a Double Barrel Breech Loaded gun, as provided under law and on the petitioner making such an application, the authorities concerned are expected to consider the same and pass appropriate orders, on merits and in accordance with law, without being bound by the earlier impugned orders passed by the respondents.

With the above observations, the writ petition stands dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5.

2.The Additional District Magistrate,Erode District, Erode.

+1cc to Govt. Pleader Sr 67286
+1cc to Mr.N.Manokaran, Advocate Sr 67069

SJ (CO)
km/20.11.

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